

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

THE LANCE AND LINDA NEIBAUER ) Case No.:  
JOINT TRUST, an Oregon Trust, by and )  
Through LANCE NEIBAUER, as trustee. )  
Plaintiff. )  
v. )  
MICHAEL J. KURGAN, an individual. )  
Defendant. )  
----- )  
EXHIBITS IN SUPPORT OF  
PLAINTIFFS' NOTICE OF FILING  
NOTICE OF REMOVAL  
TO UNITED STATES  
DISTRICT COURT

A. Notice of Removal:

B. Plaintiff's Pleadings

1. Order Granting Motion for Service of Complaint By Alternate Method
2. Summons & Complaint

A. Notice of Removal:

IN THE CIRCUIT COURT OF THE STATE OF OREGON,  
FOR THE COUNTY OF DESCHUTES

THE LANCE AND LINDA NEIBAUER  
JOINT TRUST, an Oregon Trust, by and  
Through LANCE NEIBAUER, as trustee,  
Plaintiff,

Case No. 14CV0361

**PLAINTIFFS' NOTICE OF FILING  
NOTICE OF REMOVAL  
TO UNITED STATES  
DISTRICT COURT**

16 PLEASE TAKE NOTICE THAT PURSUANT TO 28 U.S.C. Section 1446(d), on the 25<sup>th</sup> day of  
17 July, 2014, Defendant, MICHAEL J. KURGAN, filed a Notice of Removal and thereafter, the  
18 undersigned MICHAEL J. KURGAN filed with the Clerk of the Circuit Court Of The State Of  
19 Oregon, For The County Of Deschutes, a true and correct copy of the Notice of Removal, which  
20 was filed in the United States District Court for the District of Oregon. A copy of said Notice of  
21 Removal is attached hereto, incorporated herein as though set forth in full as Exhibit A; and the  
22 pleadings received by the Defendant, set forth in full as Exhibit B, and incorporated herein, as  
23 though set forth in full. The state court shall proceed no further.

Respectfully Submitted:

MICHAEL J. KURGAN  
6538 Collins Avenue  
Unit 288  
Miami Beach, FL 33141  
Phone (858) 408-9330  
Mail n461bb@gmail.com

B. PLEADINGS

1. ORDER PERMITTING ALTERNATE SERVICE OF PROCESS

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF DESCHUTES

THE LANCE AND LINDA NEIBAUER  
JOINT TRUST, by and through LANCE  
NEIBAUER, as trustee.

No. 14CV0361

11

**ORDER GRANTING MOTION  
FOR SERVICE OF COMPLAINT  
BY ALTERNATE METHOD**

MICHAEL J. KURGAN: an individual

Defendant

IT IS HEREBY ORDERED that Plaintiff's Motion for Service of Complaint by Alternate Method is GRANTED. Plaintiff The Lance and Linda Neibauer Joint Trust may serve the Summons and Complaint on defendant Michael Kurgan ("Kurgan") by mailing by first class mail and certified mail a copy of both to Kurgan at: 6538 Collins Ave., Unit 288, Miami Beach, Florida 33141; 1155 Camino Del Mar, Del Mar, California 92014-2605 and 12790 El Camino Real, Suite 300, San Diego, California 92130.

DATED this 23rd day of June, 2014

384 Alta J. Brady

**Circuit Court Judge**

Submitted by

MARKOWITZ, HERBOLD, GLADE  
& MEHLHAFF, P.C.  
By: Emily Teplin Fox, OSB No. 121720  
Attorney for Plaintiff

NEIBKU138953

Served via First Class Mail  
on June 26. Answers due on  
July 25, to avoid default.

Many individuals with chronic pain believe they are powerless. This can lead to a sense of hopelessness and despair.

2. SUMMONS & COMPLAINT

**In the Circuit Court of the State of Oregon  
For the County of Deschutes**

THE LANCE AND LINDA NEIBAUER JOINT TRUST, )  
by and through LANCE NEIBAUER, as trustee, )  
)

Plaintiffs, ) No. 13CV0361

vs. )

MICHAEL J. KURGAN, an individual, )  
)

Defendant. )

*TO:* Michael J. Kurgan, an individual  
12790 El Camino Real, Suite 300  
San Diego, CA 92130

*Defendant*

*You are hereby required to appear and defend the complaint filed against you in the above-entitled action within thirty (30) days from the date of service of this summons upon you, and in case of your failure to do so, for want thereof, plaintiff(s) will apply to the court for the relief demanded in the complaint.*

**NOTICE TO THE DEFENDANT: READ THESE PAPERS CAREFULLY!**

You must "appear" in this case or the other side will win automatically. To "appear" you must file with the court a legal paper called a "motion" or "answer". The "motion" or "answer" must be given to the court clerk or administrator within 30 days along with the required filing fee. It must be in proper form and have proof of service on the plaintiff's attorney or, if the plaintiff does not have an attorney, proof of service upon the plaintiff.

If you have any questions, you should see an attorney immediately. If you need help in finding an attorney, you may call the Oregon State Bar's Lawyer Referral Service at (503) 684-5763 or toll-free in Oregon at (800) 452-7636.

SIGNATURE OF ATTORNEY/AUTHOR FOR PLAINTIFF

*Lisa A. Kaner* 881373  
ATTORNEY'S/AUTHOR'S NAME (TYPED OR PRINTED) BAR NO. (IF ANY)

TRIAL ATTORNEY IF OTHER THAN ABOVE (TYPED OR PRINTED) BAR NO.

STATE OF OREGON  
County of Multnomah

ss.

*I, the undersigned attorney of record for the plaintiffs, certify that the foregoing is an exact and complete copy of the original summons in the above-entitled action.*

ATTORNEY OF RECORD FOR PLAINTIFF(S)

**TO THE OFFICER OR OTHER PERSON SERVING THIS SUMMONS:** You are hereby directed to serve a true copy of this summons, together with a true copy of the complaint mentioned therein, upon the individual or other legal entity to whom or which this summons is directed, and to make your proof of service on the reverse hereof or upon a separate similar document which you shall attach hereto.

ATTORNEY(S) FOR PLAINTIFF(S)

MARKOWITZ, HERBOLD, GLADE & MEHLHAF, P.C.  
1211 SW Fifth Avenue, Suite 3000  
Portland, OR 97204  
(503) 295-3065

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824312

1  
2  
3

4 IN THE CIRCUIT COURT OF THE STATE OF OREGON  
5 FOR THE COUNTY OF DESCHUTES

6 THE LANCE AND LINDA NEIBAUER  
7 JOINT TRUST, an Oregon Trust, by and  
through LANCE NEIBAUER, as trustee,

No. 14CV0361

8 Plaintiffs,  
9 vs.

10 MICHAEL J. KURGAN, an individual,

11 Defendant.

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**COMPLAINT (Tortious  
Interference with Contract,  
Breach of Contract,  
and Declaratory Relief)**

**NOT SUBJECT TO  
MANDATORY ARBITRATION**

**Fee Authority: ORS § 21.160(1)(c)**

**Amount in Controversy: more  
than \$50,000 and less than  
\$1,000,000**

**DEMAND FOR JURY TRIAL**

Plaintiff's allege:

18 **THE PARTIES**

1.

20 Plaintiff is The Lance and Linda Neibauer Trust ("The Trust"), established under the  
21 laws of the State of Oregon, and located in Bend Oregon. Lance Neibauer is a trustee of The  
22 Trust. Plaintiff, The Trust is the owner of an aircraft N461BB, a 2001 Piper Meridian  
23 ("aircraft"), which is located in Oregon.

25 //

26 //

1

2.

2

Defendant is Michael J. Kurgan, a resident of Miami-Dade County, Florida.

3

3.

4

Defendant Michael J. Kurgan has engaged in substantial and not isolated activities within the state of Oregon including, but not limited to, entering into the Lease of the aircraft, taking delivery of the aircraft and returning the aircraft in Oregon.

5

#### VENUE AND JURISDICTION

6

4.

7

This Court has jurisdiction in this case pursuant to ORS 28.010, ORS 28.020, and the Uniform Declaratory Judgments Act (ORS 28.010 through 28.160), and because a substantial part of the events giving rise to the claim occurred in Deschutes County, Oregon, The Trust was established in Deschutes County, Oregon, its trustee resides therein, and the harm is being suffered therein.

8

#### FACTS COMMON TO ALL CLAIMS

9

5.

10

In August 2013, The Trust, by and through its trustee, and defendant, signed a Lease of the aircraft for a period of six months. The Lease ran from September 20, 2014, when defendant took possession of the aircraft until March 20, 2014, when the Lease, and its addendum, expired.

11

6.

12

In December 2013, the parties entered into an addendum to the Lease. The Addendum to the Lease expired on March 20, 2014, when defendant failed to comply with its terms, by among other things, failing to pay for the extension of the original Lease term.

13

Page 2 - COMPLAINT

MARKOWITZ, HERBOLD,  
GLADE & MEHLHAU, P.C.  
SUITE 3000 PACWEST CENTER  
1211 SW FIFTH AVENUE  
PORTLAND, OREGON 97204-6760  
(503) 295-2055  
Fax: (503) 223-9135

1 7.

2 The Lease provided that "At any time during the Lease Term, the Lessee shall have  
3 the right to Purchase the Aircraft."

4 8.

5 The Lease further provided:

6 "More than 30 days prior to the end of the Lease Term the Lessee must notify the  
7 Owner of his intentions. At this time, there are two options:

8 a. Purchase the Aircraft. With Terms as set forth in Paragraph 6.  
9 b. Terminate the Lease. If Lessee decides to terminate the lease, he shall  
10 return the Aircraft to Keystone Aviation in Aurora, OR, and engage the  
11 Facility in an Annual Inspection. All Airworthiness squawks found during  
12 this inspection shall be the responsibility of the Lessee."

13 9.

14 Defendant did not perform in accordance with the Addendum to the Lease by, among  
15 other things, failing to fund by March 20, 2014 the extension of the original Lease.

16 10.

17 The Lease and the Addendum to the Lease expired by their terms on March 20, 2014.

18 11

19 At no time, prior to the expiration of the Lease and its Addendum, did defendant  
20 exercise the option to purchase the aircraft.

21 //

22 //

1 12.

2 On April 3, 2014, after the Lease and Addendum had expired, defendant proposed to  
3 either return the plane to plaintiff, or to rent the plane by the hour.  
4

5 13.

6 Plaintiff, The Trust, through its Trustee Mr. Nejbauer, rejected defendant's proposal  
7 to lease by the hour and instructed defendant to return the plane.  
8

9 14.

10 On April 5, 2014, fifteen days after the Lease and the Addendum had both expired,  
11 defendant returned the aircraft to Keystone Aviation in Aurora, Oregon, and immediately  
12 thereafter terminated his insurance on the aircraft.  
13

14 15.

15 More than a month after expiration of the Lease and the Addendum, and several  
16 weeks after defendant returned the aircraft to plaintiff, on April 22, 2014, plaintiff entered  
17 into a contract for the sale of the aircraft.  
18

19 16.

20 On April 23, 2014, defendant wrongfully asserted an option to purchase the aircraft.  
21

22 17.

23 Plaintiff is entitled to its reasonable attorneys' fees and costs pursuant to the  
24 Indemnity Agreement effective September 20, 2013, whereby defendant agreed to hold The  
25 Trust harmless from any loss arising out of the aircraft.  
26

### FIRST CAUSE OF ACTION

### (Intentional Interference with Contract)

13

Plaintiff incorporates and realleges all of the preceding paragraphs.

16

Defendant wrongfully interfered with Plaintiff's contract to sell the aircraft by improper means, including: (1) wrongfully asserting an option to purchase the aircraft after the option terminated; (2) threatening to file a frivolous lawsuit to assert an option to purchase the aircraft after the Lease and the option expired; (3) demanding payment when no money was owed to defendant to avoid the improper claim to cloud title to the aircraft; and (4) asserting to the Federal Aviation Administration that the Lease and the Addendum to the Lease were in effect as of April 25, 2014, after the Lease and the Addendum had expired.

36

Defendant's interference directly prevented plaintiff from closing the sale of the aircraft, and therefore caused economic damages including, but not limited to, the continued maintenance, insurance, and storage of the aircraft, interest on the proceeds of the sale for every day of delay of the sale, attorneys' fees and other economic damages in an amount not less than \$100,000, to be proven at trial.

21

Additionally, plaintiff is entitled to recover its reasonable attorneys' fees and costs pursuant to the Indemnity Agreement whereby defendant agreed to hold The Trust harmless from any loss arising out of the aircraft.

18

1 22.

2 Plaintiff is entitled to an award of interest at the rate of 9% per year upon all  
3 economic damages that plaintiff is found to have sustained from the time those damages  
4 accrued until the time of trial.

5 **SECOND CAUSE OF ACTION**

6 **(Breach of Contract)**

7 23.

8 Plaintiff incorporates and realleges all of the preceding paragraphs.  
9

10 24.

11 Plaintiff was in compliance with all materials terms of the contract.  
12

13 25.

14 Defendant breached the contract with plaintiff by:  
15

16 (a) failing to pay for the Annual Inspection of the aircraft at the termination of the  
17 Lease and for all Airworthiness Squawks found during that inspection as required by section  
18 7(b) of the Lease in the amount of \$9,612.28; and

19 (b) failing to return the aircraft at the termination of the Lease on March 20, 2014,  
20 and thereby wrongfully possessing the aircraft from March 20, 2014 through April 5, 2014,  
21 for a value of \$4,000.

22 26.

23 Additionally, plaintiff is entitled to its reasonable attorneys' fees and costs pursuant to  
24 the Indemnity Agreement whereby defendant agreed to hold The Trust harmless from any  
25 loss arising out of the aircraft.

26 //

1 27.

2 Plaintiff is entitled to an award of interest at the rate of nine percent (9%) per annum  
3 upon all economic damages that plaintiff is found to have sustained from the time those  
4 damages accrued until the time of trial.

5 **THIRD CAUSE OF ACTION**

6 **(Declaratory Judgment)**

7 28.

8 Plaintiff incorporates and realleges all of the preceding paragraphs.  
9

10 29.

11 Pursuant to ORS 28.010, ORS 28.020, ORS 28.030, and the Uniform Declaratory  
12 Judgments Act (ORS 28.010 through 28.160), a justiciable dispute has arisen and there is an  
13 actual controversy between the parties over the option to purchase the aircraft, which plaintiff  
14 contends expired when the Lease and Addendums expired, and which defendant contends he  
15 has a continuing right to exercise following the expiration of the Lease.

16 30.

17 Plaintiff and defendant have adverse legal interests and this controversy can be  
18 resolved through this action with specific relief through a binding decree.

19 31.

20 Plaintiff is entitled to an Order and Judgment declaring that:

21 Defendant Michael J. Kurgan has no right or option to purchase the  
22 aircraft N461BB, a 2001 Piper Meridian, from its owner The Lance and  
23 Linda Neibauer Joint Trust.

24 **PRAYER FOR RELIEF**

25 NOW, THEREFORE, plaintiff's pray for relief as follows:

A. On the First Claim for Relief for Intentional Interference with Contract, for an award of damages against defendant of not less than \$100,000 but in an amount to be proven at trial, plus prejudgment interest, attorney fees and costs;

B. On the Second Claim for Relief for Breach of Contract, for an award of damages against defendant of not less than \$13,612.28 but in an amount to be proven at trial, plus prejudgment interest, attorney fees and costs:

C. On the Third Claim for Relief for Declaratory Judgment, for an order, judgment and decree declaring that defendant Michael J. Kurgan has no right or option to purchase the aircraft N461BB, a 2001 Piper Meridian from it owner The Lance and Linda Neibauer Joint Trust;

**D. An award of attorney fees**

E For prejudgment interest and reasonable costs; and

F. For other relief as the Court deems appropriate.

**DEMAND FOR JURY TRIAL**

Plaintiffs demand trial by jury.

DATED this 12th day of May, 2014

MARKOWITZ, HERBOLD, GLADE  
& MEHLHAFF, P.C.

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Lisa A. Kaner, OSB #881373  
LisaKaner@MHGM.com  
Of Attorneys for Plaintiffs

Trial Attorney: Lisa A. Kaner, OSB #881373

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